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Attorneys for Defendant
EXPERIAN INFORMATION SOLUTIONS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMELIA M. PASTERNAK,

Plaintiff,

v.

**TRANS UNION, LLC, EXPERIAN
INFORMATION SOLUTIONS, INC.,
EQUIFAX INFORMATION SERVICES
LLC, and CAPITAL ONE BANK, a
national association,**

Defendants.

Case No. 08-02972CW

**EXPERIAN INFORMATION
SOLUTIONS, INC.'S ORIGINAL
ANSWER AND AFFIRMATIVE
DEFENSES**

(Fair Credit Reporting Act)

Defendant Experian Information Solutions, Inc. ("Experian") files its Original Answer and Affirmative Defenses to Plaintiff's Original Complaint ("Complaint") filed by Emelia M. Pasternak as follows:

1. In response to the averments contained in paragraph 1 of the Complaint, Experian admits that this Court has subject matter jurisdiction over this matter. Experian, however, expressly denies that it is liable to plaintiff or that plaintiff is in any way entitled to relief from

1 Experian.

2 2. In response to the averments contained in paragraph 2 of the Complaint, Experian
3 admits that plaintiff's action is brought pursuant to the FCRA and that plaintiff is a "consumer" as
4 that term is defined by the FCRA.

5 3. In response to the averments contained in paragraph 3 of the Complaint, Experian
6 states that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of
7 the other averments that purport to apply to plaintiffs and/or other defendants and, on that basis,
8 denies those other averments. Experian denies the remaining averments of paragraph 3.

9 4. In response to the averments contained in paragraph 4 of the Complaint, Experian
10 admits that it is an Ohio corporation that is authorized to do, and is doing, business in the State of
11 California. Experian admits that it is a consumer reporting agency as defined in the FCRA and as
12 such, receives credit information and other information on consumers for the purpose of
13 furnishing consumer reports to third parties as defined by the FCRA. Experian denies the
14 remaining averments of paragraph 4.

15 5. In response to the averments contained in paragraph 5 of the Complaint, Experian
16 states that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of
17 the other averments that purport to apply to plaintiffs and/or other defendants and, on that basis,
18 denies those other averments. Experian denies the remaining averments of paragraph 5.

19 6. In response to the averments contained in paragraph 6 of the Complaint, Experian
20 states that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of
21 the other averments that purport to apply to plaintiffs and/or other defendants and, on that basis,
22 denies those other averments. Experian denies the remaining averments of paragraph 6.

23 7. In response to the averments contained in paragraph 7 of the Complaint, Experian
24 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
25 averments that purport to apply to plaintiff, third parties, and/or other defendants and, on that
26 basis, denies those averments. Experian denies the remaining averments contained in paragraph 7
27 of the Complaint.

28 8. In response to the averments contained in paragraph 8 of the Complaint, Experian

1 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
2 averments that purport to apply to plaintiff, third parties, and/or other defendants and, on that
3 basis, denies those averments. Experian further states that it has not yet completed its
4 investigation with regard to its reporting of plaintiff's credit information. Therefore, Experian is
5 without knowledge or information sufficient to form a belief as to the truth or the falsity of the
6 averments that purport to apply to plaintiff's credit report and, on that basis, denies those
7 averments. Experian, however, admits that it receives consumer data from Capital One.
8 Experian denies the remaining averments contained in paragraph 8 of the Complaint.

9 9. In response to the averments contained in paragraph 9 of the Complaint, Experian
10 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
11 averments that purport to apply to plaintiff and, on that basis, denies those averments. Experian
12 denies the remaining averments contained in paragraph 9 of the Complaint.

13 10. In response to the averments contained in paragraph 10 of the Complaint, Experian
14 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
15 averments that purport to apply to other defendants and, on that basis, denies those averments.
16 Experian denies the remaining averments contained in paragraph 10 of the Complaint.

17 11. In response to the averments contained in paragraph 11 of the Complaint, Experian
18 states that plaintiff requested a reinvestigation almost two years after first becoming aware that
19 she was an alleged victim of identity theft. Plaintiff requested a reinvestigation by letter in
20 August 2007. In the letter, she disputed three tradelines and some inquiries that were listed on her
21 January 2007 consumer disclosure. Plaintiff stated that one of the tradelines was opened
22 fraudulently. Experian conducted a reinvestigation of plaintiff's disputes. At the time of the
23 reinvestigation, two of the disputed tradelines were not displaying in plaintiff's credit profile.
24 Nonetheless for those tradelines, Experian sent a referral to the other national credit bureaus,
25 notifying them of plaintiff's fraud dispute. The third tradeline was reporting with a positive pay
26 history. On August 14, 2007, the results of Experian's reinvestigation were sent to plaintiff. The
27 results included information regarding the disputed accounts that were not displaying at the time
28 of plaintiff's request for a reinvestigation and the dispute verification process. Experian expressly

1 denies that it violated the FCRA, either negligently or intentionally. Furthermore, Experian
2 denies that plaintiff is entitled to any relief sought in the Complaint or to any other relief
3 whatsoever against Experian. Experian denies the remaining averments of paragraph 11.

4 12. In response to the averments contained in paragraph 12 of the Complaint, Experian
5 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
6 averments that purport to apply to other defendants and, on that basis, denies those averments.
7 Experian denies the remaining averments contained in paragraph 12 of the Complaint.

8 13. In response to the averments contained in paragraph 13 of the Complaint, Experian
9 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
10 averments that purport to apply to other defendants and, on that basis, denies those averments.
11 Experian denies the remaining averments contained in paragraph 13 of the Complaint.

12 14. In response to the averments contained in paragraph 14 of the Complaint, Experian
13 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
14 averments that purport to apply to other defendants and, on that basis, denies those averments.
15 Experian denies the remaining averments contained in paragraph 14 of the Complaint.

16 15. In response to the averments contained in paragraph 15 of the Complaint, Experian
17 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
18 averments that purport to apply to other defendants and, on that basis, denies those averments.
19 Experian denies the remaining averments contained in paragraph 15 of the Complaint.

20 16. In response to the averments contained in paragraph 16 of the Complaint, Experian
21 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
22 averments that purport to apply to other defendants and, on that basis, denies those averments.
23 Experian denies the remaining averments contained in paragraph 16 of the Complaint.

24 17. In response to the averments contained in paragraph 17 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to other defendants and, on that basis, denies those averments.
27 Experian denies the remaining averments contained in paragraph 17 of the Complaint.

28 18. Paragraph 18 of the Complaint does not require an answer because it does not

1 include any factual averments. To the extent an answer is required, Experian denies the
2 averments in paragraph 18.

3 19. In response to the averments contained in paragraph 19 of the Complaint, Experian
4 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 averments that purport to apply to other defendants and, on that basis, denies those averments.
6 Experian denies the remaining averments contained in paragraph 19 of the Complaint.

7 20. In response to the averments contained in paragraph 20 of the Complaint, Experian
8 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
9 averments that purport to apply to other defendants and, on that basis, denies those averments.
10 Experian denies the remaining averments contained in paragraph 20 of the Complaint.

11 21. In response to the averments contained in paragraph 21 of the Complaint, Experian
12 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
13 averments that purport to apply to other defendants and, on that basis, denies those averments.
14 Experian denies the remaining averments contained in paragraph 21 of the Complaint.

15 22. Paragraph 22 of the Complaint does not require an answer because it does not
16 include any factual averments. To the extent an answer is required, Experian denies the
17 averments in paragraph 22.

18 23. In response to the averments contained in paragraph 23 of the Complaint, Experian
19 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
20 averments that purport to apply to other defendants and, on that basis, denies those averments.
21 Experian denies the remaining averments contained in paragraph 23 of the Complaint.

22 24. In response to the averments contained in paragraph 24 of the Complaint, Experian
23 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
24 averments that purport to apply to other defendants and, on that basis, denies those averments.
25 Experian denies the remaining averments contained in paragraph 24 of the Complaint.

26 25. In response to the averments contained in paragraph 25 of the Complaint, Experian
27 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
28 averments that purport to apply to other defendants and, on that basis, denies those averments.

1 Experian denies the remaining averments contained in paragraph 25 of the Complaint.

2 26. Paragraph 26 of the Complaint does not require an answer because it does not
3 include any factual averments. To the extent an answer is required, Experian denies the
4 averments in paragraph 26.

5 27. In response to the averments contained in paragraph 27 of the Complaint, Experian
6 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
7 averments that purport to apply to other defendants and, on that basis, denies those averments.
8 Experian denies the remaining averments contained in paragraph 27 of the Complaint.

9 28. In response to the averments contained in paragraph 28 of the Complaint, Experian
10 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
11 averments that purport to apply to other defendants and, on that basis, denies those averments.
12 Experian denies the remaining averments contained in paragraph 28 of the Complaint.

13 29. In response to the averments contained in paragraph 29 of the Complaint, Experian
14 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
15 averments that purport to apply to other defendants and, on that basis, denies those averments.
16 Experian denies the remaining averments contained in paragraph 29 of the Complaint.

17 30. Paragraph 30 of the Complaint does not require an answer because it does not
18 include any factual averments. To the extent an answer is required, Experian denies the
19 averments in paragraph 30.

20 31. In response to the averments contained in paragraph 31 of the Complaint, Experian
21 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
22 averments that purport to apply to other defendants and, on that basis, denies those averments.
23 Experian denies the remaining averments contained in paragraph 31 of the Complaint.

24 32. In response to the averments contained in paragraph 32 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to other defendants and, on that basis, denies those averments.
27 Experian denies the remaining averments contained in paragraph 32 of the Complaint.

28 33. In response to the averments contained in paragraph 33 of the Complaint, Experian

1 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
2 averments that purport to apply to other defendants and, on that basis, denies those averments.
3 Experian denies the remaining averments contained in paragraph 33 of the Complaint.

4 34. Paragraph 34 of the Complaint does not require an answer because it does not
5 include any factual averments. To the extent an answer is required, Experian denies the
6 averments in paragraph 34.

7 35. In response to the averments contained in paragraph 35 of the Complaint, Experian
8 denies the averments. Experian further states that to the extent the averment suggests that
9 Experian negligently or intentionally permitted false credit information to be included in
10 plaintiff's credit file, Experian denies the averment.

11 36. In response to the averments contained in paragraph 36 of the Complaint, Experian
12 denies the averments. Experian further states that to the extent the averment suggests that
13 Experian caused plaintiff's alleged damages, Experian expressly denies that it is liable to plaintiff
14 or that plaintiff is in any way entitled to relief from Experian.

15 37. In response to the averments contained in paragraph 37 of the Complaint, Experian
16 denies the averments.

17 38. Paragraph 38 of the Complaint does not require an answer because it does not
18 include any factual averments. To the extent an answer is required, Experian denies the
19 averments in paragraph 38.

20 39. In response to the averments contained in paragraph 39 of the Complaint, Experian
21 denies the averments. Experian further states that to the extent the averment suggests that
22 Experian negligently or intentionally permitted false credit information to be included in
23 plaintiff's credit file, Experian denies the averment.

24 40. In response to the averments contained in paragraph 40 of the Complaint, Experian
25 denies the averments. Experian further states that to the extent the averment suggests that
26 Experian caused plaintiff's alleged damages, Experian expressly denies that it is liable to plaintiff
27 or that plaintiff is in any way entitled to relief from Experian.

28 41. In response to the averments contained in paragraph 41 of the Complaint, Experian

1 denies the averments.

2 42. Paragraph 42 of the Complaint does not require an answer because it does not
3 include any factual averments. To the extent an answer is required, Experian denies the
4 averments in paragraph 42.

5 43. In response to the averments contained in paragraph 43 of the Complaint, Experian
6 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
7 averments that purport to apply to other defendants and, on that basis, denies those averments.
8 Experian denies the remaining averments contained in paragraph 43 of the Complaint.

9 44. In response to the averments contained in paragraph 44 of the Complaint, Experian
10 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
11 averments that purport to apply to other defendants and, on that basis, denies those averments.
12 Experian denies the remaining averments contained in paragraph 44 of the Complaint.

13 45. In response to the averments contained in paragraph 45 of the Complaint, Experian
14 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
15 averments that purport to apply to other defendants and, on that basis, denies those averments.
16 Experian denies the remaining averments contained in paragraph 45 of the Complaint.

17 46. Paragraph 46 of the Complaint does not require an answer because it does not
18 include any factual averments. To the extent an answer is required, Experian denies the
19 averments in paragraph 46.

20 47. In response to the averments contained in paragraph 47 of the Complaint, Experian
21 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
22 averments that purport to apply to other defendants and, on that basis, denies those averments.
23 Experian denies the remaining averments contained in paragraph 47 of the Complaint.

24 48. In response to the averments contained in paragraph 48 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to other defendants and, on that basis, denies those averments.
27 Experian denies the remaining averments contained in paragraph 48 of the Complaint.

28 49. In response to the averments contained in paragraph 49 of the Complaint, Experian

1 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
2 averments that purport to apply to other defendants and, on that basis, denies those averments.
3 Experian denies the remaining averments contained in paragraph 49 of the Complaint.

4 50. In response to the averments contained in the unnumbered paragraph beginning
5 "Wherefore" and each of its subparts, Experian denies that plaintiff is entitled to any relief sought
6 in the Complaint or to any other relief whatsoever against Experian. Experian denies the
7 remaining averments of these unnumbered paragraphs.

8 **AFFIRMATIVE DEFENSES**

9 51. In addition to the responses to the individual paragraphs above, Experian further
10 pleads the following affirmative defenses.

11 **FIRST DEFENSE**

12 52. As an affirmative defense, Experian states that the injuries and damages allegedly
13 sustained by plaintiff were directly and proximately caused by the acts of others, including the
14 alleged "Imposter."

15 **SECOND DEFENSE**

16 53. As an affirmative defense, Experian states that plaintiff's rights of recovery are
17 barred by the doctrines of waiver, estoppel or laches and by the statute of limitations as set out in
18 15 U.S.C. §1681p, and any other applicable statute of limitations.

19 **THIRD DEFENSE**

20 54. As an affirmative defense, Experian states that plaintiff's claims against Experian
21 are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

22 **FOURTH DEFENSE**

23 55. As an affirmative defense, Experian states that plaintiff's rights of recovery based
24 upon any alleged action or proceeding under state or common law are barred pursuant to 15
25 U.S.C. §1681h(e).

26 **FIFTH DEFENSE**

27 56. As an affirmative defense, Experian states that all or part of the damages allegedly
28 suffered by plaintiffs in this action were caused by plaintiff's failure to mitigate damages as

1 required by law.

2 **SIXTH DEFENSE**

3 57. As an affirmative defense, Experian states that plaintiff is barred from recovery to
4 the extent plaintiff was contributorily and/or comparatively negligent.

5 **SEVENTH DEFENSE**

6 58. As an affirmative defense, Experian states that the complaint fails to state a claim
7 upon which relief can be granted to the plaintiffs and should be dismissed.

8 **EIGHTH DEFENSE**

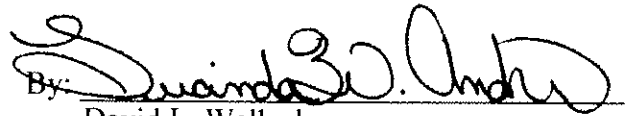
9 59. As an affirmative defense, Experian states that any claims for punitive or
10 exemplary damages violate Experian's right to due process of law under the United States and
11 California Constitutions.

12 **PRAYER**

13 WHEREFORE, defendant Experian prays that plaintiff take nothing as a result of this suit,
14 that this action be dismissed in its entirety, and that Experian be awarded all costs, including
15 reasonable attorney's fees, and other relief that the Court deems just and proper.

1 Dated: August 21, 2008

JONES DAY

2
3 By: 

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21 Attorneys for Defendant
22 EXPERIAN INFORMATION SOLUTIONS,
23 INC.

24 CERTIFICATE OF SERVICE

25 I am over the age of eighteen years and not a party to this action. My business address is 2727
26 North Harwood Street, Dallas, Texas 75201. On March 14, 2008, I served EXPERIAN
27 INFORMATION SOLUTIONS, INC.'S ORIGINAL ANSWER AND AFFIRMATIVE
28 DEFENSES on the interested parties in this action by placing a true copy thereof, enclosed in a
sealed envelope, addressed as follows:

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Attorneys for Defendant Capital One Bank

I caused such envelope to be deposited in the mail at Dallas, Texas. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Dallas, Texas in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

